STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION

IN THE MATTER OF THE REQUEST:	)	
FOR REVIEW BY:	)	CHARGE NO.: 2009CH1181
	)	ALS NO.: 09-0118
HOPE FAIR HOUSING CENTER,	)	HUD NO.: 050900698
Complainant.	)	

ORDER

This matter coming before the Commission by a panel of three, Commissioners Marti Baricevic, Robert S. Enriquez, and Gregory Simoncini presiding, upon the Complainant's Request for Review ("Request") of the Notice of Dismissal issued by the Department of Human Rights ("Department") of Charge No. 2009CH1181, Hope Fair Housing Center, Complainant, and Shirley & Fred Bandaly, Respondents; and the Commission having reviewed *de novo* the Department's investigation file, including the Investigation Report and the Complainant's Request and supporting materials, and the Department's response to the Complainant's Request; and the Complainant's Reply, and the Commission being fully advised of the premises;

NOW, THEREFORE, it is hereby **ORDERED** that:

(1) The dismissal of the Complainant's charge is **VACATED** on the ground that the Commission finds that there is **SUBSTANTIAL EVIDENCE** of discrimination; and

(2) The Complainant's charge is **REINSTATED** and **REMANDED** to the Department for further Processing of the Charge in accordance and consistent with this Order and the Act.

In support of which determination the Commission states the following findings of fact and reasons:

1. The Complainant is a private fair housing agency located in Illinois. The Complainant promotes equal opportunities in housing and its purpose is to ensure equal access to housing for all people through use of education, counseling, investigation and enforcement. Its goal is to eliminate unlawful discriminatory practices that injure those who seek to purchase or rent housing.

2. The Complainant alleges that it was approached by Murdies Hall ("Hall"), an

African American woman, and Sylvia Hayde ("Hayde"), an African American real estate agent, following an incident that occurred in predominantly white Villa Park, Illinois on June 1, 2008.

3. Prior to June 1, 2008, Hayde's services as a real estate agent were retained by Hall, who had decided to purchase a single-family home in Villa Park (the "Subject Property").

4. In June of 2008, Hall made an offer to purchase the Subject Property. Thereafter, on June 1, 2008, Hayde and her husband, along with Hall and some of her family members all drove to Villa Park so that Hall could view the Subject Property for a second time. All of these individuals were African American.

5. Shirley Bandaly and Fred Bandaly (Bandalys), who are white, owned a home that was located directly across the street from the Subject Property. On June 1, 2008, several people were on the Bandalys' front yard, including at least one white female. There was also an American flag hanging in front of the Bandalys' home.

6. On June 1, 2008, when Hayde, Hall, and their companions arrived at the Subject Property, Hall and Hayde heard a female shout from the direction of the Bandalys' property, "Oh hell, no niggers!"

7. When they turned in the direction of the Bandalys' home, they saw a white female go into the Bandalys' home and return outside with a confederate flag. The white female then removed the American flag and replaced it with the confederate flag. Hall and Hayde later identified Shirley Bandaly as the white female who had replaced the American flag with the confederate flag. Fred Bandaly denies any involvement in these activities.

8. As a result of the June 1, 2008, incident, Hall and her family became frightened, and Hall decided that she no longer wanted to purchase the Subject Property. As a result, Hayde lost any commission that she may have realized from the real estate sales transaction.

9. Hall and Hayde thereafter sought the assistance of the Complainant regarding the June 1, 2008 incident. The Complainant independently investigated the incident and assisted Hall and Hayde in filing federal Fair Housing Act violation complaints with the U.S. Department of Housing and Urban Development (HUD), which then deferred those complaints to the Department.[1]

10. The Complainant filed its own organizational complaint with the DHR on

[1] Hall and Hayde each filed charges of discrimination with the Department based on the June 1, 2008 incident. Those charges were each subsequently dismissed by the Department. Those dismissals were the subject of two separate but related Requests for Review that were considered by the Commission at the same time that the current Request for Review was considered: In re the Request for Review by: Murdies Hall, Charge No. 2009CH1190, and In re the Request for Review by: Sylvia Hayde, Charge No. 2009CH1177. Separate Orders will issue from the Commission in both of those matters.

November 12, 2008, alleging that the Bandalys' racial discrimination frustrated the Complainant's mission and caused the Complainant to divert its resources.[2]

11. The Complainant alleged a violation of 775 ILCS 5/3-105.1 of the Illinois Human Rights Act (the "Act"), which provides:

> *It is a civil rights violation to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of his or her having exercised or enjoyed, or on account of his or her having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by this Article 3.*
>
> 775 ILCS 5/3-105.1 *(*West 2009)

12. The language of § 3-105.1 of the Act mirrors the language of § 3617 of the Fair Housing Act (FHA), 42 U.S.C.A. § 3617. There is no Illinois caselaw that interprets § 3-105.1 of the Act. Therefore, it is proper and instructive to look to federal law for some guidance in interpreting the Act. *See* Szkoda v. Illinois Human Rights Commission, et al., 302 Ill.App.3d 532, 706 N.E.2d 962 (1st Dist. 1988). However, the Commission need not apply in "lockstep" fashion federal court interpretations of § 3617 to § 3-105.1 of the Act. *See* Trayling v. Board of Fire and Police Com'rs of Village, 273 Ill.App.3d 1, 11, 652 N.E.2d 386, 393 (2nd Dist. 1995). It is appropriate to recall that the Act is remedial legislation, and thus should be liberally construed in order to effectuate its purposes. *See* Arlington Park Race Track Corp. v. Human Rights Com'n, 199 Ill.App.3d 698, 703-704, 557 N.E.2d 517, 520 (1st. Dist. 1990).

13. After an investigation, the Department dismissed the charge based on lack of substantial evidence of discrimination. Under the Act, substantial evidence is evidence …"which a reasonable mind accepts as sufficient to support a particular conclusion and which consists of more than a mere scintilla but may be somewhat less than a preponderance." *See* 775 ILCS 5/7A-102(D)(2) (West 2009).

14. The Department concluded that the single June 1, 2008 incident failed to rise to the level of a violation of § 3-105.1 of the Act. In coming to this conclusion, the Department relied on certain federal court cases that construed § 3617 of the FHA. The Department essentially took the position that § 3-105.1 of the Act should be construed in the same manner as § 3617 of the FHA, and found that based on the federal decisions, there was not substantial evidence that the Respondents had coerced, intimidated, threatened, or interfered with Hall or Hayde in the exercise of any right protected or granted by Article III of the Act.

15. The Complainant filed a Request for Review of the Department's dismissal

[2] The Department acknowledges that the Complainant qualifies as an aggrieved person under the Act with standing to sue, and the Department does not challenge the Complainant's standing to sue in its organizational capacity.

of the charge. In its Request, the Complainant argues that the Department failed to consider relevant evidence, that the Department ignored the "commonly accepted symbolism of the confederate flag as an expression of white supremacy and racial hatred," and that the Department applied an incorrect legal standard when it found no substantial evidence. The Complainant argues that a single act of coercion, intimidation, or interference based on race is a violation of § 3-105.1 of the Act.

16. In its Response to the Complainant's Request, the Department states that it resolved all ambiguities and conflicts concerning the disputed facts in favor of the Complainant.

17. Having done so, the Department argues that in cases involving neighbors or private citizens, federal courts limited their application of § 3617 of the FHA to situations that involved egregious conduct, such as threats of force or duress, or a pattern of pervasive and invidious harassment. The Department cites various federal cases, such as Gourlay v. Forest Lake Estates Civil Association of Port Richey, Inc., 276 F.Supp.2d 1222 (M.D.FL 2003)(vacated upon joint motion to withdraw and vacate order of summary judgment due to settlement); Michigan Protection and Advocacy Service, Inc. v. Babin, 799 F. Supp. 695 (E.D. Mich. 1992); Halprin v. Prairie Single Family Homes of Dearborn Park Association, 388 F.3d 327 (7th Cir. 2004), and Walton v. Claybridge Homeowners Association, Inc., 191 Fed.Appx.446 (7th Cir. 2006)(not selected for publication in the Federal Reporter).

18. Based on these and certain other federal cases, the Department argues that in order to show substantial evidence of a violation of § 3-105.1 of the Act, the allegations must have shown either (1) violence, threats of violence, or physical or economic duress, or (2) a pattern of pervasive and invidious harassment.

19. In its Reply, the Complainant argues that the Department ignores the plain language of § 3-105.1 of the Act, and the purpose of Article III of the Act. The Complainant also takes exception to the cases relied upon by the Department in its Response.

20. In particular, the Complainant correctly points out that Gourlay lacks precedential value because that order was vacated. *See* Cohen v. Illinois Institute of Technology, 524 F.2d 818, 829-30, n.33 (7th Cir. 1975), *cert. denied*, 425 U.S. 943, 96 S.Ct. 1683, 48 L.Ed.2d 187 (1976); *see also* Gilmore Steel Corp. v. United States, 585 F.Supp. 670, 674, n.3 (C.I.T. 1984).

21. The Complainant also correctly points out that Michigan Protection and Advocacy Service, Inc. v. Babin, 799 F. Supp. 695 (E.D. Mich. 1992), which was relied upon by the Department, was subsequently appealed to Sixth Circuit Court of Appeals, resulting in the decision of Michigan Protection and Advocacy Services, Inc. v. Babin, 8 F.3d 337 (6th Cir. 1994), where the lower court was affirmed on other grounds. Regarding the scope of § 3617, the Sixth Circuit stated:

> *Section 3617 is not limited to those who used some sort of "potent force or duress," but extends to other actors who are in a position directly to disrupt the exercise or enjoyment of a protected right and exercise their powers with discriminatory animus. Under this standard, the language*

> *"'interfere with" encompasses such overt acts as racially-motivated firebombings…sending threatening notes…and less obvious, but equally illegal, practices such as exclusionary zoning…deflating appraisals because of discriminatory animus...and insurance redlining.*
>
> *See* Michigan Protection, 8 F.3d 337, 347(internal citations omitted)

22. After reviewing the file and pertinent authority, the Commission concludes that the Complainant has met its burden of showing substantial evidence of discrimination in violation of § 3-105.1 of the Act.

23. The Commission declines to adopt the Department's unduly restrictive interpretation of § 3-105.1 of the Act. Even assuming that the Commission was inclined to apply federal law "lockstep" to resolve this issue, the cases cited by the Department do not support its contention that a single act can never rise to the level of a violation of § 3-105.1 of the Act, or that the act has to be violent, pervasive, or display a show of force.

24. In fact, federal courts, such as the court in Michigan Protection, 8 F.3d 337, 347, previously quoted in this Order, acknowledge that § 3617 of the FHA should receive a broad application. *See e.g.*, Nevels v. Western World Insurance Co., 359 F.Supp.2d 1110, 1122, *quoting* Walker v. City of Lakewood, 272 F.3d 1114, 1128 ("Section 3617 does not require a showing of force or violence for coercion, interference, intimidation, or threats to give rise to liability.").

25. Furthermore, the Commission believes that the interpretation of § 3-105.1 of the Act proposed by the Department would conflict with the Commission's obligation to interpret the Act liberally so as to fully effectuate the Act's broad remedial purposes.

26. In this case, the Complainant has alleged facts demonstrating an explicitly racially motivated and intimidating act, one which communicated to African Americans that they were not desired in a predominantly white community because of their race. As a direct result of this racially motivated act, an African American was prevented from exercising her right to purchase real estate in a community of her choice because of her race. Further, the facts alleged demonstrate an interference with a real estate agent's ability to aid and assist her African American client in the exercise and enjoyment of the rights guaranteed to her client by Article III of the Act. This is the very sort of ill that Article III of the Act was designed to remedy. The Complainant's Request is persuasive.

THEREFORE, IT IS HEREBY ORDERED THAT:

(1) The Commission finds that there is **SUBSTANTIAL EVIDENCE** of discrimination; and,

(2) The Department's dismissal of the Complainant's charge is therefore **VACATED,** and the charge is **REINSTATED** and **REMANDED** to the Department for further Processing consistent with this Order and the Act.

STATE OF ILLINOIS)
)
HUMAN RIGHTS COMMISSION) **Entered this 23rd day of June 2009.**

Commissioner Marti Baricevic

Commissioner Robert S. Enriquez

Commissioner Gregory Simoncini